

3. No Answer to the Complaint was filed, and contemporaneously with this Motion Plaintiffs have filed a Request to Clerk to Enter a Default pursuant to Fed.R.Civ. Pro 55(a) and mailed a copy, first class mail, postage prepaid, to the Defendants.

4. The Defendants are neither infants nor incompetent persons and are not in the military or naval service of the United States or its allies, or otherwise within the provisions of the Soldiers and Sailors Civil Relief Act of 1940 or its amendments.

WHEREFORE, Plaintiffs seek the following relief:

(a) Judgment entered as set out in the proposed Order and Judgment by Default attached to this Motion.

Respectfully submitted,

JENNINGS SIGMOND, P.C.

BY: s/Richard J. DeFortuna
RICHARD J. DeFORTUNA (ID. NO. 86260)
SANFORD G. ROSENTHAL (ID. NO. 38991)
The Penn Mutual Towers
510 Walnut Street, 16th Floor
Philadelphia, PA 19106
(215) 351-0674/0611

Attorneys for Plaintiffs

DATE: September 17, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARPENTERS PENSION AND ANNUITY FUND	:	CIVIL ACTION
OF PHILADELPHIA AND VICINITY, et al	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
DERRICK R. BANKS and	:	
ANNA E. BANKS	:	
	:	
Defendants	:	NO. 02-4545

**DECLARATION OF AMOUNT DUE UPON
APPLICATION FOR DEFAULT**

Richard J. DeFortuna, Esquire, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiffs in the above-entitled action; that he has read the Complaint filed in this action and knows the contents thereof, and the same is true and there is now due by Defendants Derrick R. Banks and Anna E. Banks, to Plaintiffs on the debt set forth in the Complaint, the sum of \$23,272.19 itemized as follows:

Principal Balance	\$20,569.03
Interest through August 31, 2002	1,432.09
Late fees through August 31, 2002	123.57
Attorneys' Fees and Costs	<u>1,147.50</u>
TOTAL	\$23,272.19

Defendants are in default for failure to appear in this action, and Defendants are not

infants nor incompetent persons and are not in the military service, as appears in the attached Affidavit.

I declare under penalty of perjury in accordance with 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge, information and belief

s/ Richard J. DeFortuna
RICHARD J. DEFORTUNA, ESQUIRE

Executed On: September 17, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARPENTERS PENSION AND ANNUITY FUND	:	CIVIL ACTION
OF PHILADELPHIA AND VICINITY, et al	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
DERRICK R. BANKS AND ANNA E. BANKS	:	
Defendants	:	NO. 02-4545

AFFIDAVIT OF RICHARD J. DEFORTUNA

COMMONWEALTH OF PENNSYLVANIA	:	SS
	:	
COUNTY OF PHILADELPHIA	:	

Richard J. DeFortuna, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiffs herein; that he is authorized to take this Affidavit on behalf of the Plaintiffs; that Defendants owes to Plaintiffs the sum of \$23,272.19, representing the Principal Balance under the Note in the amount of \$20,569.03, interest in the amount of \$1,432.09, late charges in the amount of \$123.57, and attorneys' fees and costs in the amount of \$1,147.50; that an itemization of said counsel fees is attached as Exhibit 1; that said counsel fees represent a fair and reasonable charge for the service of affiant's law firm in connection with the collection of the unpaid debt in this matter and are customarily charged to other clients of the law firm in similar cases.

s/Richard J. DeFortuna
RICHARD J. DEFORTUNA, ESQUIRE

Sworn to me and subscribed
before me this _____ day of
_____, 2002

NOTARY PUBLIC

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARPENTERS PENSION AND ANNUITY FUND OF PHILADELPHIA AND VICINITY, et al	:	CIVIL ACTION
	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
DERRICK R. BANKS and ANNA E. BANKS	:	
	:	
	:	
Defendants	:	NO. 02-4545

**DECLARATION OF FAILURE TO PLEAD OR
OTHERWISE DEFEND IN SUPPORT OF
APPLICATION FOR ENTRY OF JUDGMENT**

I, Richard J. DeFortuna, Esquire, being duly sworn according to law, deposes and says:

1. That he is the authorized agent of the Plaintiffs and the attorney of record, and has personal knowledge of the facts set forth in this Affidavit.
2. That examination of the Court files and records in this case shows that service of the within Complaint was made upon the Defendants on July 25, 2002.
3. That more than twenty (20) days have elapsed since the date on which the said service was made with a Summons and a copy of a Complaint, excluding the date thereof.
4. That Defendants herein have failed to answer or otherwise defend as to Plaintiffs' Complaint, or serve a copy of any answer or other defense which they might have had.
5. That this Declaration is executed in accordance with Rule Nos. 55(a) and 55(b) of the Federal Rules of Civil Procedure for the purpose of enabling the Plaintiffs herein to obtain an entry of default judgment against Defendants herein, for their failure to answer or otherwise defend as to the

Plaintiffs' Complaint.

6. Defendants are not in the military or naval service of the United States or its allies, or otherwise within the provisions of the Soldiers and Sailors Civil Relief Act of 1940 or its amendments, and are not infants nor incompetent persons.

I declare under penalty of perjury in accordance with 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge, information and belief

Executed On.: September 17, 2002

s/ Richard J. DeFortuna

RICHARD J. DEFORTUNA, ESQUIRE

CERTIFICATE OF SERVICE

Richard J. DeFortuna, Esquire, deposes and says that he did cause to be mailed a true and correct copy of Plaintiffs' Motion for Judgment by Default to the Defendants, by regular mail on the date set forth below as follows:

Derrick R. Banks

s/ Richard J. DeFortuna
RICHARD J. DEFORTUNA, ESQUIRE

Date: September 17, 2002

THIS DOCUMENT HAS BEEN ELECTRONICALLY FILED AND IS AVAILABLE FOR
VIEWING AND DOWNLOADING FROM THE ECF SYSTEM

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARPENTERS PENSION AND ANNUITY FUND OF PHILADELPHIA AND VICINITY, et al	:	CIVIL ACTION
	:	
	:	
Plaintiffs	:	
	:	
	:	
v.	:	
	:	
DERRICK R. BANKS and	:	
ANNA E. BANKS	:	
	:	
	:	
Defendants	:	NO. 02-4545

**ORDER AND JUDGMENT BY DEFAULT
AGAINST DEFENDANTS DERRICK R. BANKS AND ANNA E. BANKS**

Upon consideration of the Complaint and Motion for Default Judgment of the Plaintiffs, Carpenters Pension and Annuity Fund of Philadelphia and Vicinity, (“Pension Fund”) and Edward Coryell (“Coryell” and together with Pension Fund “Plaintiffs”), it appearing to the Court that Derrick R. Banks and Anna E. Banks (“jointly, Defendants”) were served with process on July 25, 2002 and have inexcusably, knowingly and willfully failed to appear, plead or otherwise defend, and the default against said Defendants having been entered, it is

ORDERED:

1. Judgment is entered against the Defendants Derrick R. Banks and Anna E. Banks, jointly and severally, and in favor of the Plaintiffs for \$23,272.19 including the following:

- (a) Principal balance of \$20,569.03 due and owing under the Note
- (b) Interest through August 31, 2002 in the amount of \$1,432.09
- (c) Late fees through August 31, 2002 in the amount of \$123.57

(d) Attorneys' fees and costs incurred by Plaintiffs through September 17, 2002 in the amount of \$1,147.50. Plaintiffs are awarded reimbursement of all additional attorneys' fees and

costs they incur in the collection and enforcement of this judgment.

2. This Order and Judgment is enforceable, without duplication, by one or more of the Plaintiffs, jointly and severally, or their agents.

BY THE COURT

Dated: _____
Philadelphia, PA

J.